IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 22997 of 2005(K)

PETITIONER:

SUMANGALATH BAI, U.D.CLERK,
WATER SUPPLY DIVISION, ATTINGAL.

BY ADV. SRI.M.BALAGOVINDAN
SRI.SASITH.M.R

RESPONDENTS:
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1. **KEALA WATER AUTHORITY, REPRESENTED BY ITS MANAGING DIRECTOR, KERALA WATER AUTHORITY BUILDING, THIRUVANANTHAPURAM.**

2. **CHEIF ENGINEER, KERALA WATER AUTHORITY, THIRUVANANTHAPURAM.**

3. **SUPERINTENDING ENGINEER, KERALA WATER AUTHORITY, THIRUVANANTHAPURAM.**

4. **EXECUTIVE ENGINEER, KERALA WATER AUTHORITY, ATTINGAL DIVISION.**

5. **KARIKRISHNAN G., U.D.CLERK, P.H.DIVISION, KOLLAM.**

BY ADV. SRI.C.UNNIKRISHNAN, SC, KWA
SRI.J.KRISHNAKUMAR, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/10/2007 ALONG WITH WPC.NO.28174 OF 2005 AND WPC.NO.32598 OF 2005, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.22997/2005 K

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ADVICE MEMO ISSUED BY THE PUBLIC SERVICE COMMISSION ON 17/03/1992.**

EXT.P2 SERIES: **COPY OF THE CERTIFICATE EVIDENCING PETITIONER HAS PASSED ALL THE OBLIGATORY TESTS IN THE DEPARTMENT WITHIN TIME.**

EXT.P3: **COPY OF THE PRELIMINARY LIST OF U.D.CLERKS WHO ACQUIRED TEST QUALIFICATION FOR PROMOTION DTD. 5/07/95.**

EXT.P4: **COPY OF THE PRELIMINARY LIST OF L.D.CLERKS QUALIFIED FOR PROMOTION DTD. 13/04/99.**

EXT.P5: **COPY OF THE RELEVANT PORTION OF THE SENIORITY LIST OF L.D.CLERK AS ON 1/01/96.**

EXT.P6: **COPY OF THE PROMOTION ORDER OF THE PETITIONER AS U.D.CLERK DTD. 2/03/2001.**

EXT.P7: **COPY OF THE FINAL SENIORITY LIST OF U.D.CLERKS AS ON 1/01/2005.**

EXT.P8: **COPY OF THE OBJECTION FILED BY THE PETITIONER.**

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.22997, 28174 & 32598 of 2005

Dated this the 11th day of October, 2007.

JUDGMENT

Common issues arise in these writ petitions. Therefore, they have been heard together and are disposed of by this common judgment. For the sake of convenience, W.P.(C)No.32598/05 is taken as the leading case.

2. The date of assignment of seniority in the cadre of Upper Division Clerks/Lower Division Clerks in the Water Authority has been questioned. Admittedly, promotion to the post of Upper Division Clerk is made on the basis of seniority. It seems that in the year 1998, certain posts of Upper Division Clerks were upgraded and consequently certain Lower Division Clerks were promoted to the post of Upper Division Clerk, which came into being by the upgradation. There is a test qualification prescribed for the post of Upper Division Clerk. Apparently, promotions were not being effected contemporaneous to the occurrence of the vacancy from 1992 onwards. It therefore came about that seniority of certain persons in the cadre of Upper Division Clerk came to be superseded

when juniors who had acquired qualifications earlier came to be promoted as Upper Division Clerks.

3. By Ext.P1 order dated 11.4.1994, it seems that 58 persons were promoted as Upper Division Clerks. Such promotions were under Rule 31(a) of the Kerala State and Subordinate Service Rules. Under Ext.P2 order dated 22.9.1994, the promotions ordered to 58 person as per Ext.P1 order was cancelled and apparently on the basis of revised list of Upper Division Clerk/Upper Division typist, 100 persons were promoted to the post of Upper Division Clerk. It is noted in Ext.P2 that insofar as the incumbents mentioned therein, except Serial No.40 and 44, the others were upgraded as Upper Division Clerk with effect from the dates noted against their names. It is further noted in Ext.P2 that certain clerks who have been promoted as Upper Division Clerks as per Ext.P1 order, were liable to be reverted as Lower Division Clerks with effect from 22.9.1994 for accommodating their seniors, who were test qualified for promotion along with others.

4. Thereafter, the said 11 persons, who came to be reverted, as per Ext.P2 order, were again promoted to the post of Upper Division Clerk with effect from 29.9.94. Going by Ext.P3, on a re-ascertainment of the sanctioned strength of Upper Division Clerk/Lower Division Clerk, steps were taken on 22.9.1994 in order to accommodate the 11 persons who were promoted by Ext.P2 order. By a subsequent order dated 30.6.1999 certain persons came to be given promotion with retrospective effect from 11.4.1994. The date of effect given in Ext.P4 came to be corrected by Ext.P5 order dated 22.9.1994.

5. In short, there was complete uncertainty as to the date of occurrence of the vacancies. It was further directed in Ext.P5 that the pay and allowances which had actually been directed to be paid in the post of Upper Division Clerk with effect from 11.4.1994 was liable to be recovered.

6. Persons who were aggrieved by Ext.P5 and similar orders and who were earlier promoted to the post of Upper Division Clerk approached this court in several

writ petitions. It seems that some of the petitioners in these cases were directed to be given promotion with effect from 22.9.1994 and that seniority was also directed to be restored. Ultimately, in Ext.P6 judgment of the Division Bench it was noted that there was no data indicating the date of occurrence of the vacancy. The case was, therefore, remanded to the authority with a direction to decide the issue with regard to the date of occurrence of the vacancy, after hearing the parties. It seems that the parties were heard thereafter and Water Authority issued Ext.P7 order appending therewith the following details: serial number, name, seniority number in the existing seniority list, date of promotion order, revised date of promotion etc. The list as such does not contain the date of occurrence of the vacancy. It is Ext.P7, which has been challenged in this writ petition.

7. A counter affidavit has been filed by the Water Authority, inter alia, contending that the pursuant to Ext.P6 judgment, there was a re-assessment of the vacancy position. Accordingly, they found that certain vacancies were found to have come up prior to 11.9.1994

and prior to 22.9.1994. The precise date on which those vacancies arose is not mentioned in the counter affidavit. The Water Authority submits that the contesting respondents had acquired the test qualification earlier and therefore, they were given promotion.

8. I heard learned counsel for the petitioners and the standing counsel for the Water Authority.

9. The crucial question which was directed to be considered in Ext.P6 judgment was the date on which the vacancy occurred in the post of Upper Division Clerk. Once such a question is decided, then the question to be considered is who were test qualified on that date. Once a list of persons who were test qualified on the date of occurrence of the vacancies is prepared, then naturally promotions are to be effected in the order of seniority. Originally 46 vacancies were found to have existed as on 11.4.1994 going by Ext.P2 order. The stand taken by the Water Authority in the counter affidavit is that an additional 36 vacancies were traced out. In paragraph 10 of the counter affidavit, it is stated that in addition to the 40 vacancies (It may have to be treated as 46 going by

Ext.P2), 15 vacancies were filled up before 11.4.1994, 8 vacancies due to reassigning the seniority of provisional hands, 7 vacancies due to re-assignment of the date of promotion of Scheduled Caste/Scheduled Tribe employees and 6 vacancies due to retirement of senior officers. It is stated that an additional 36 vacancies were identified as on 11.4.1994 and 1.7.1994 respectively. It is further stated that the petitioners were not qualified at the time of Exts.P1 and P2 and therefore, they were not included. Ext.P1 order is dated 11.4.1994 and Ext.P2 order dated 22.9.1994. The statement in the counter affidavit that the petitioners were not qualified even on 22.9.1994, date of Ext.P2 seems to be incorrect. All the petitioners became test qualified prior to 22.9.1994. In fact, there is no dispute on the part of the Water Authority that the petitioners came to be test qualified in June, 1994. In such circumstances, they should have been considered for promotion in July, 1994. I also find that the manner in which 15 vacancies were identified as having occurred prior to 11.4.1994 is not available in the counter affidavit. Was it a retirement vacancy or was it a

vacancy which existed on account of the incumbent having proceeded on leave for a period in excess of six months? Was it a vacancy which had occurred on the death of the incumbent and if so, what is the date of occurrence of the vacancy. These details are not available in the counter affidavit. These details are not discernible from Ext.P7 also.

10. In my view, in the light of the direction contained in Ext.P6 judgment, the Water Authority should ascertain the precise date on which the vacancies had arisen. These details must be available from the list also. Unless this is done, revision of the seniority list as contemplated by Ext.P6 judgment will never become final.

11. In these circumstances, reference should also be made to Ext.P8, which has been produced in W.P.(C)No.28174/07. The Chief Engineer notes therein that complaints are received even after the orders dated 26.3.2007. Steps are being taken to ascertain the details regarding the individuals who had claimed re-assignment of seniority. Therefore, fresh assignment is necessary in

the Water Authority now in the light of the complaints, after assessment of the occurrence of vacancies to secure compliance with Ext.P6 judgment.

12. For all these reasons, I am of the view that the matter requires reconsideration by the Water Authority, inter alia, keeping in mind the directions issued by this court in Ext.P6. It is declared that the assignment of seniority of the petitioners and the contesting respondents in the present case, in the list appended to Ext.P7 shall stand set aside. The Water Authority shall correctly ascertain the date of occurrence of the vacancies of Upper Division Clerk, on account of retirement, on account of death, or promotion, creation of vacancies by way of upgradation or otherwise. Simultaneous to the assessment of the date of occurrence of the vacancies, Water Authority shall also prepare the list of incumbents with reference to the date on which they have acquired the test qualification. Therefore, preparation of seniority list shall be made keeping in mind the principle that even if the junior acquires the qualifications prior to the senior, the

assignment of seniority will have to be made with reference to the date of occurrence of the vacancy. Revised proceedings in this regard will be passed within six months from the date of receipt of a copy of this judgment. Before issuing orders, all the parties shall be heard.

Writ petitions are disposed of as above.

Sd/-

(V.GIRI)

JUDGE

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